IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Amended CWP No.2896 of 2005
Date of Decision: January 22, 2007

1.Rachna d/o Sh.Ghan Shyam Dass w/o Vineet Kumar, resident of Behind Murari Cinema, Khaddi Mohalla, Bhiwani

2.Anita Devi d/o Sh.Om Parkash, resident of Laj Pat Nagar Bhiwani, Near Kharkari Fatak, Bhiwani

3.Sonia d/o Sh.Narender Kundu, resident of 37, Patel Nagar, Bhiwani

4.Raj Bala d/o Sh.Inder Singh, resident of VPO Mitathal (Bhiwani)

5.Sunita Kumari d/o Sh.Jagdish Singh, resident of H.No.332/4, Krishna Colony Near Yoga Ashram, Bhiwani

6.Veena d/o Sh.Hari Chand Kalara, resident of H.No.10/4, Krishna Colony Near Mal Godam Road, Bhiwani

7.Meena Rani d/o Rajinder Pal, Doctor Hostel G.H. Bhiwani Room 3,4, District Bhiwani

8.Kanta d/o Sh.Om Parkash, resident of VPO Ajit Pura (Bhiwani)

9.Sumitra d/o Sh.Sant Ram, resident of Dhana Road Dadri Gate Street No.5, Bhiwani

10.Roshni d/o Sh.Darshan Lal, Manju Medicose Surkhab Chowk, Hissar Road, Sirsa

11.Meena d/o Sh.Prem Parkesh, resident of H.No.2229, Sector-13, HUDA, Bhiwani

12.Sunita Morwal d/o Sh.Tara Chand, resident of H.No.201, Old Housing Board Colony, Bhiwani

13.Sajana Devi d/o Ram Kumar resident of Ward No.6, VPO Siwani Mandi, District Bhiwani

14.Suman d/o Sh.Subash Chander, resident of VPO Nalai,Tehsil Siwani Mandi District Bhiwani

15.Kavita w/o Sh.Vijay Kumar, resident of VPO Kheri Tehsil Siwani Mandi, District Bhiwani

16.Kavita d/o Sh.Add Ram, resident of VPO Mansarbass, District Bhiwani

17.Shakuntla d/o Sh.Ram Pal, resident of VPO Dhani Biran, District Bhiwani

18.Rajbala w/o Sh.Zile Singh, resident of VPO Jeetpura, District Bhiwani

19.Nirmala d/o Sh.Raghu Ram, resident of H.No.1471, Sector 13, HUDA, Bhiwani

20.Santosh d/o Sh.Kartar Singh, resident of Hisar Road, H.No.2501/1, Rohtak

21.Pinki d/o Sh.Bhal Singh, resident of VPO Kalinga, Bhiwani

22.Asha d/o Sh.Nafe Singh s/o Sh.Rajender Singh, resident of VPO Jhanswa, Tehsil Matanhail, District Jhajjar

23.Soma Rani d/o Sh.Kalu Ram, resident of 4, Marla Krishna Colony, behind Vaish College, H.No.45/4, Bhiwani

24.Saroj Bala d/o Sh.Risal Singh, c/o Virender Middha, Village Gobikan, Post Office Bijuwali, Dabwali (Sirsa)

25.Harjeet d/o Sh.Gurmukh Singh w/o Sh.Mohan Singh, Village Dhani Bangi, Tehsil Rania P.O. Dhoddar (Sirsa)

26.Naresh Kumari d/o Ranjeet Singh, c/o Sh.Om Prakash Talwandi, Near Satluj Public School Ellenabad, Sirsa

27.Neetu Malhotra d/o Sh.Rakesh Malhotra, resident of 458, Jawahar Nagar, Mohindergarh

28.Pushpa Kumari w/o Sh.Surender Kumar VPO Surti Jakhal, Mohindergarh

.....Petitioners

VERSUS

1.State of Haryana through its Secretary, Health Department, Haryana, Civil Secretariat, Chandigarh

2.Director General of Health Services, Haryana, Sector-6, Panchkula

.....Respondents

CORAM:- HON'BLE MR.JUSTICE ASHUTOSH MOHUNTA
HON'BLE MR.JUSTICE R S MADAN

PRESENT: Mr.RK Malik, Advocate
for the petitioners.

Mr.Jaswant Singh, Additional Advocate General,
Haryana and
Dr.Anmol Rattan Sidhu,Additional Advocate
General Haryana.

R S MADAN, J.

By this order we propose to dispose of the bunch of 31 Civil Writ Petitioners No.6600, 6822, 6900, 8748, 9549, 3489, 3465, 4337, 5489, 5475, 6567, 6632, 3838, 3345, 4651, 5036, 4953, 4930, 5584, 4539, 19161, 11422, 11143, 10611, 19563, 17022, 7313, 16630 of 2005 and 10677, 14637 of 2006 which involve identical facts and law in all the petitions.

The facts of the case are taken from amended Civil Writ Petition No.2896 of 2006, titled as **Rachna and others** Vs. **State of Haryana and others.**

In brief, the case of the petitioners is that on 31-8-2004, the Haryana Staff Selection Commission vide advertisement No.6/2004 advertised 400 posts of Staff Nurse. The petitioners who fulfilled the eligible criteria applied for the said posts. The last date of submissions of the application was 14-09-2004. On the basis of the aforesaid advertisement, the candidates were called for interview on 08-11-2004 and the said process of interview was closed on 14-11-2004 and the result of the said posts was declared on 21-12-2004 when the Election Model Code of Conduct issued by the Election Commission had come into force on 17-12-2004.

After the new Government came into force, the matter was examined by the Government and on 19-6-2005 a notice was issued in which the earlier selection made on 21-12-2004 was set aside on the ground that the result was declared after the issuance of Election Model Code of Conduct. The copy of the notice is attached as Annexure P4 and new advertisement was issued to fill up the same very posts vide advertisement Annexure P5.

It is the case of the petitioners that the impugned action of the State to cancel the earlier selection and to restart the fresh process, is illegal, unjust, unfair, unconstitutional, arbitrary and liable to be set aside.

It is the case of the petitioners that since the entire process of the selection was completed prior to the enforcement of Election Model Code of Conduct, which was issued on 17-12-2004, merely that the result was declared by the Secretary of the Staff Selection Commission on 21-12-2004, is no ground to cancel the said selection, specially in the circumstances when the whole process of selection had already been completed prior to declaration of the Election Model Code of Conduct.

It is further the case of the petitioners that the selection process to the aforesaid posts was made by Haryana Staff Selection Commission constituted under Haryana Staff Selection Commission Act 2004. The members and Chairman have their fixed tenure. They cannot be removed. They are independent agency and have no pressure of any kind from any side. The selection of the petitioners have been made by an independent body. Now the posts have been taken from the purview of the Staff Selection Commission and the said work has been entrusted to a committee headed by Director General of Health Services, Haryana with no

fixed tenure. They have no independence and they have to work under the political pressure. So the action of the State to cancel the selection made by the independent body i.e. Haryana Staff Selection Commission and further entrusting the said process to departmental committee, is on the face of it, arbitrary and illegal.

It was thus prayed that candidates appointed as Staff Nurses by an independent body prior to the coming into force of the Election Model Code of Conduct are entitled to be appointed. Hence, direction be issued to the respondents to appoint the petitioners and other selected candidates and to grant them all consequential benefits along with cost of the petition.

Upon notice, the respondents-State resisted the claim in terms of the written statement dated 29-07-2005. It was pleaded therein that since the Election Model Code of Conduct had come into force w.e.f. 17-12-2004. still the Haryana Staff Selection Commission continued with the process of selections of various posts including the posts of Staff Nurses. It declared the results of selection of Staff Nurses on 21-12-2004. However, keeping in view the Model Code of Conduct enforced by the Election Commission of India, the Haryana Staff Selection Commission ought not to have continued with the process of selection and declared the results of various examinations and interviews conducted by it. The matter came to the notice of the Election Commission of India and a communication was addressed by it to the Chief Secretary, Haryana vide letter dated 23-12-2004 that the declaration of results of various examinations would be violative of Model Code of Conduct.

It was further pleaded that it has been noticed by the

Election Commission of India from time to time that there is a general tendency amongst the political parties in power to make transfers, appointments, selections, announcements and launching new schemes during the period of the election process. It has also been pointed out in an affidavit filed by the Additional Chief Electoral Officer, Haryana, Chandigarh on behalf of the Election Commission of India in CWP No.1817 of 2005 Dr.Surat Singh Vs. State of Haryana that an attempt is being made by the ruling party to lure the electorate. Ruling party always makes an effort to take an advantage being in power, which tilts the balance in its favour or influences the electorate. The written statement further reflects the various appointments made by the Commission for various Boards and State Industrial Security Force etc. which are not relevant for the purpose of disposing of this writ petition. It was thus pleaded that on account of the Election Model Code of Conduct announced by the Election Commission of India, the selection is bad in the eyes of law.

We have heard the learned counsel for the parties and carefully gone through the record of the case.

On behalf of the petitioners, it is contended that vide Annexure P4, 400 posts of Staff Nurses were re-advertised by the Director General, Health Services, Panchkula wherein the plea was taken that the result of Staff Nurses had since been declared on 21-12-2004 during the enforcement of Election Model Code of Conduct, therefore, the Government has decided to re-advertise these posts. It was mentioned therein that those, who had applied earlier need not to apply afresh. The last date of receipt of the applications was 11-07-2005.

Learned counsel for the petitioners was trying to canvass

that the posts could not be re-advertised because no reason whatsoever was pointed out that the selection of the candidates has been made in an arbitrary and illegal manner by adopting illegal procedure. The only stand of the respondents is that because of the Election Model Code of Conduct having come into force, they are re-advertising the 400 posts of Staff Nurses for fresh selection. This act on the part of the respondents is illegal, arbitrary and not binding on the rights of the petitioners.

Vide Annexure R1 attached with additional affidavit by Dr.Sushma Madan, Director General Health Services, Haryana, Panchkula, respondent No.2, the Secretary, Haryana Staff Selection Commission has directed the Director General, Health Services, Panchkula that process of issuing the appointment letters be done at their own level. Annexure R1 is reproduced as under:

"*From*
Secretary,
Haryana Staff Selection Commission,
Chandigarh.
To
Director General Health Services, Haryana,
Panchkula.
No.HSSC-Conf./Misc.-II/2005/112
Dated 20.1.2006
Subject: Court case-CWP No.2896/2005-Smt.Rachna and others Vs. Haryana Govt.-Regarding Information of recruitment of Staff Nurses.
In reference to your letter No.70/1-1 Nursing-06/466, dated 19-1-2006, on the above-mentioned subject.
In this reference you are informed that the Haryana Staff Selection Commission declared the results of the

following categories during the imposition of the Model Code of Conduct (17-12-2004 to 5-3-2005):-

Sr.No.	***Department***	***Advt.No.***	***Category No.***	***Name of post***	***No. of advertised posts***	***Date of declaration of result***
1	Health Deptt.	6/2004	1	Staff Nurse	400	21.12.2004
2	Police Deptt.	i)4/2004	1	S.I.Police	80	17.12.2004
		ii)6/2003	1	S.I.Police	16	17.12.2004

The copy of the results is attached herewith.

The recommendations of the Staff Nurses were sent to Director General Health Services, Haryana and that of S.I. Police was sent to Director General of Police, Haryana and the process of issuing of appointment letter was to be done at their own level.

Hence, you are requested to collect the required information on point No.3 from the concerned Departments.

Sd/-

Haryana Staff Selection Commission,

Chandigarh."

In support of his arguments, reference was made to various authorities. In **Girish Arora and others** Vs. **State of Haryana and another** 1998(1) RSJ 613, the Division Bench of this Court had held that if the Government decides not to approve the recommendations made by the Commission then the same must be placed before the Legislature as per the requirement of Article 323(2). The same need not be communicated to the Commission or the affected candidates. In the instant case, the recommendations have not been placed before the Legislature till date.

Reference was also made to **Sandeep Kumar** Vs.

State of Punjab through the Secretary, Health and Family Welfare and others 2005(3) SCT 557 wherein at para No.7 reference has been made to Civil Writ Petition No.19788 of 2002 titled **Amarjit Singh and others** Vs. **State of Punjab and others**, decided on 18-1-2005 and Civil Writ Petition No.12985 of 2003, titled **Harjeet Singh and others** Vs. **State of Punjab and another**, decided on 18-5-2004. The Division Bench of this Court in the case of **Amarjit Singh's case (supra)** while dealing with the issue of imposition of ban on appointments in the wake of promulgation of Code of Conduct has concluded that no fault can be found with the selected candidates, who have succeeded before the Board. After the Model Code of Conduct has come into force on 5-3-2005, the Model Code of Conduct must be deemed to have been outlived its operative effect. For the instant reason also, we find no justification in the stand adopted by the respondents.

Reference was also made to the Division Bench of this Court in CWP No.833 of 2005, titled **Sarita** Vs. **State of Haryana** decided on 21-1-2005 and CWP No.1621 of 2005, titled **Renuka Wadhwa** Vs. **State of Haryana and others,** decided on 14-02-2005, wherein it was observed that the Election Model Code of Conduct could not stand embargo with respect to the appointment of the persons, who have been duly selected by the Commission.

Learned State counsel could not dispute the proposition of law and facts involved in the aforesaid cases (supra).

In view of the conclusion drawn above by the Division Bench, no fault has been pointed out by the respondents with respect to the selection process except that the Election Model Code of Conduct had come into force on 17-12-2004 and the result was announced on 21-12-2004. The

petitioners cannot be denied of their valuable right to be declared successful by the Commission.

”To be or not to be” may have been a dilemma faced by 'Hamlet'. The position in the present scenario was plainly converse and did not admit any doubt whatsoever. The issuance of orders for appointment of selected Nurses got compulsively eclipsed by the promulgation of Code of Conduct, a bright feature of Indian Republic. It is not a case where the appointments were held up by any other cause. That being so, the moment the election process was over and need was felt for filling up the vacancies aforementioned, the competent Authority was duty bound to appoint those already selected by the Commission.

In view of the above, we quash the advertisement (Annexure P4) through which the applications for the posts of 400 Staff Nurses were invited. All the writ petitions are allowed. The respondents are, therefore, directed to offer appointment to the petitioners on regular basis on the same terms and conditions as mentioned in advertisement dated 31-08-2004. The needful shall be done within a period of two months from the date of receipt of a certified copy of this order. No order as to costs.

(R S MADAN)
JUDGE

(ASHUTOSH MOHUNTA)
JUDGE

January 22, 2007
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